

Update: Criminal Procedure Monograph 6—Pretrial Motions (Revised Edition)

Part 2—Individual Motions

6.24 Motion to Dismiss Because of Double Jeopardy— Multiple Punishments for the Same Offense

Insert the following text after the January 2004 update to page 57:

A defendant's murder conviction based on alternate theories of felony-murder and first-degree premeditated murder does not offend the prohibition against double jeopardy, but in such a case, the defendant may not also be convicted of and sentenced for the predicate felony on which the felony-murder charge was based. *People v Williams II*, ___ Mich App ___, ___ (2005).

In *Williams II*, the Court noted that it was bound by the special panel's decision in *People v Bigelow*, 229 Mich App 218 (1998), which required that a predicate felony conviction be vacated when a defendant is convicted of felony-murder. *Williams II*, *supra* at ___. However, the *Williams II* Court suggested that in cases where it could be determined with certainty that the jury convicted the defendant based on evidence of premeditation, the defendant's murder conviction would not rest on his or her conviction of a predicate felony. *Williams II*, *supra* at ___. In those cases, the Court suggested that the defendant could be sentenced for the predicate felony because that conviction is not required to support any other sentence imposed on the defendant. *Williams II*, *supra* at ___.

Part 2—Individual Motions

6.28 Motion to Suppress the Fruits of Illegal Police Conduct

Insert the following text before the third paragraph on page 64:

In *United States v Martin*, ___ F3d ___ (CA 6, 2005), the Sixth Circuit Court of Appeals relied on *California v Hodari D*, 499 US 621 (1991), in determining that a firearm abandoned by the defendant as he fled from police officers was properly admitted into evidence against him.

In *Martin*, two police officers saw the defendant trespassing and stopped their patrol car to arrest him. *Martin, supra* at _____. The defendant ran from the officers and as he fled, the defendant discarded a revolver. *Martin, supra* at _____. The defendant argued the revolver was inadmissible because the officers' seizure of him was unlawful. *Martin, supra* at _____.

The *Martin* Court disagreed and relied on *Hodari D* in its ruling:

“[W]hen a suspect refuses to submit to a show of authority by the police, the suspect is not seized by the police until such time as he or she submits or is forced to submit to police authority. . . . [B]ecause a seizure does not occur when a mere show of authority occurs, but only when one yields to a show of authority, the fourth amendment does not apply to anything one may abandon while fleeing the police in an attempt to avoid a seizure.” *Martin, supra* at _____, citing *Hodari D, supra* at 626, 629.

Part 2—Individual Motions

6.37 Motion to Suppress Evidence Seized Without a Search Warrant

1. Searches of Automobiles for Evidence

Insert the following case summary after the February 2004 update to page 90:

In *Illinois v Caballes*, 543 US ____ (2005), a police officer lawfully stopped the defendant for a traffic violation. Another officer—one accompanied by a narcotic-sniffing dog—heard the police dispatch about the traffic stop and joined the defendant and the first officer at the scene. As the first officer completed his duties with regard to the traffic stop, the second officer walked the drug-sniffing dog around the exterior of the defendant’s vehicle, and the dog alerted to the trunk of the defendant’s car. *Caballes, supra* at _____. A search of the defendant’s trunk revealed a quantity of marijuana for which the defendant was charged and convicted. The defendant claimed that the marijuana was inadmissible against him because he was detained beyond the time necessary to process the initial traffic stop, and because no reasonable suspicion existed to support the search of his vehicle. *Caballes, supra* at _____.

Citing to *United States v Jacobsen*, 466 US 109 (1984), the *Caballes* Court explained that when police conduct does not affect a defendant’s legitimate interest in privacy, the conduct cannot be characterized as a search and therefore, the conduct does not demand fourth amendment analysis. *Caballes, supra* at _____. The Court reiterated its reasoning in *Jacobsen*: a defendant can have no legitimate interest in possessing contraband. Thus, where police conduct reveals *only* the defendant’s possession of contraband, no legitimate interest in privacy was implicated. *Caballes, supra* at _____, citing *Jacobsen, supra* at 123.

In the *Caballes* Court’s opinion:

“[C]onducting a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner, unless the dog sniff itself infringed respondent’s constitutionally protected interest in privacy.” *Caballes, supra* at _____.

Relying on the decision reached in *United States v Place*, 462 US 696 (1983), the *Caballes* Court further concluded:

“[T]he dog sniff was performed on the exterior of a respondent’s car while he was lawfully seized for a traffic violation. Any intrusion on respondent’s privacy expectations does not rise to the level of a constitutionally cognizable infringement.” *Caballes, supra* at _____.